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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	
Regarding Modification of FM and AM	)	RM-10960
Authorizations	)	

COMMENTS OF
HATFIELD & DAWSON CONSULTING ENGINEERS, LLC

These Comments have been prepared in response to the Commission's Public Notice of April 22, 2004 (Report No 2657), soliciting statements opposing or supporting the Petition for Rulemaking filed by First Broadcasting Investment Partners, LLC ("First Broadcasting"), requesting that the Commission amend certain of its procedures governing modifications of FM and AM authorizations

We believe that some of the proposals made by First Broadcasting have merit. Others we are critical of Due to prior commitments, we have not been able to expend the time necessary to fully evaluate the implications of each of the proposals. This filing, therefore, serves as our general comments on the various proposals, but may not in the final evaluation represent our full and considered opinion

Proposal 1
To Permit an FM Station Community of License Change Through a Minor Modification Application
This proposal would indeed, as First Broadcasting suggests, serve to reduce the costs and time involved in pursuing a community of license change for an FM station, and would in addition reduce or eliminate much of the uncertainty involved in the FM Rulemaking process.

One can surmise that First Broadcasting's primary interest is in eliminating the uncertainty arising from the fact that an FM community change rulemaking may elicit one or more superior counterproposals

It is our experience, however, that in the cases where we have found that a community of license change is the only way to provide expanded service, the FM station owners have almost without exception chosen to pursue the rulemaking, despite the attendant uncertainty and length of time involved. In most cases, we have not seen the uncertainty act as a deterrent

We are concerned, moreover, that permitting FM community changes via a minor modification application will raise distribution of service questions during the processing of the application. These are not issues which the Commission's FM application processing staff is accustomed to handling The addition of evaluating a Section 307(b) showing in a minor modification application

can therefore be expected to slow down the processing of the application from the current 3 to 4 months This would be true whether the processing staff received additional training, or if the Section 307(b) showings were referred to staff who normally process FM rulemakings. So while this particular proposal would serve to streamline the processing of an individual FM community change proposal, it may at the same time serve to bog down the processing of routine FM applications

First Broadcasting likens an FM change of community minor change application to an FM "one step" channel change application. This analogy is misplaced in that a "one step" channel change application, while it does involve a modification of the FM Table of Allotments, does not raise any issues of gain or loss of local service Even in cases where an FM station files an application for a "one step" downgrade in station class, local service to the community of license is maintained. By contrast, changing an FM community of license via a "one step" application raises the specter of removing a community's sole local service, and may even involve application of a "Tuck" analysis to demonstrate that a community qualifies for the first local service preference

Proposal 2
To Presume That, Under Certain Defined Circumstances, Relocation of an FM Station Providing a Community's Sole Local Service to a New Community of License Without a First Local Service is in the Public Interest
First Broadcasting questions the Commission's reliance upon "continuity of service" as an important criteria in evaluating community changes of this type Instead, First Broadcasting would have the Commission make a more complex evaluation which ensures that the community being abandoned retains aural service from at least two stations, while at the same time the relocated station expands its service population.

As a threshold matter, we are not at this time convinced that there is so little value to the concept of "continuity of service" that it should be abandoned in this manner We note that the design of First Broadcasting's proposal is such that it supports and encourages the relocation of stations from rural areas (typically served by fewer stations) to urbanized areas (with a higher density of population).

The proposal, for that matter, tries to have it both ways An example is given of a station moving from Community A (with eight aural services) to Community B (with two aural services). This example implies that a station making this type of community change would be moving from a well-served area to an underserved area. Nevertheless, the proposed rule change contemplates leaving a community with as few as two aural services, nevermind how many stations provide aural service to the new community

While spectrum efficiency is a laudable goal, it should not come at the disadvantage of persons living in rural areas who receive relatively few radio signals

Furthermore, we note that were the proposed procedure to be permitted in the context of a minor modification application, the processing of said application would be likely to add to the burden of the Commission's FM processing staff. In addition to the showings which the new procedure

would require, there may be additional showings required to satisfy the policy set forth in *Faye and Richard Tuck*, to demonstrate that the new community qualifies for a first local service preference. There may also be objections filed by third parties arguing that the new community does not qualify for a first local service preference. This will in turn serve to slow down the processing of routine FM minor change applications

Proposal 3
To Establish a Simplified Procedure to Remove Non-Viable FM Allotments from the FM Table of Allotments

We support the general concept of a procedure to remove non-viable FM Allotments, but disagree with First Broadcasting on certain elements of the proposal

At present there are several hundred vacant FM allotments across the United States. A large number of these allotments were originally proposed by a small cadre of individuals seemingly intent on dropping in as many vacant allotments as they possibly can, with no regard to the economic viability of the assignment

Certain individuals have been responsible for dozens of vacant allotments, primarily in rural areas which will have a difficult time supporting the stations While the proponents have made the required statements of interest, and while they have been under no obligation to prove that they have the financial wherewithal to construct and operate all of their allotments in the aggregate, it is our strongly held belief that when these allotments finally go to auction, the original proponents will file to bid on only a few (if any) of them This is of course mere speculation on our part, but given the sheer number of vacant allotments on the books this outcome would not surprise us in the least

We support the proposal that those allotments which are not purchased at auction should be deleted from the FM Table of Allotments We recognize, however, that not all persons who are interested in operating an FM station may be aware of the pending auction of a vacant allotment in their area until it is too late to participate in the auction While their inattention would not excuse their lack of participation in the auction, in the case of an allotment which remains vacant after the auction there may be some value in retaining the allotment and including it in the next auction After two auctions with no bidders, the allotment should definitely be removed

We do not support the deletion of those allotments which are awarded through the auction process, but which are not constructed within the 3 year construction period. In these situations, there may have been other bidders who could have managed to complete construction within the required time period, and who may still be interested in the allotment. When an allotment is awarded at auction, but not constructed within 3 years, the allotment should go back into the pool for the next auction.

Neither do we support the deletion of allotments where the licensee or permittee voluntarily surrenders the license or construction permit Again, these allotments should go back into the pool for the next auction, as there may well be individuals interested in providing the service which the prior licensee has abandoned

Proposal 4
To Open a One-Time Settlement Window to Resolve the Backlog of Pending FM Rulemakings
At this time, we neither support nor oppose this proposal

Proposal 5
To Permit Change of an AM Station's Community of License Through a Minor Modification Application
Our opposition to the proposal to permit FM station community changes via minor modification applications generally extends to AM station community changes as well. We do note, however, that these two radio services differ in that a formal FM Table of Allotments is maintained in the C F R., while the AM service has no list of assignments which is maintained as a matter of law

This circumstance is an anomaly of the development and management of the two radio services On the one hand, it would seem to be simpler to permit AM station community changes via minor modification applications, than it would for FM station community changes. Nevertheless, we feel that both AM and FM station community changes raise similar issues regarding equitable distribution of service as defined in the Communications Act

The current system to propose a change in community of license, whereby an AM station must file a major change application and an FM station must file a petition for rulemaking, provides a higher degree of public notice of the request than would a minor modification application If we are to maintain the current value placed on the maintenance of "local service," then the issues of equitable distribution of service require that opportunity be afforded to the public and other interested parties to comment on the proposed change in community. We doubt that a minor modification application, while it would appear on public notice (i.e. the Broadcast Applications list), would be sufficient to get the attention of interested parties so that they may offer comments on the community change proposal

In this regard, we are also concerned that the Commission's current system for generating the Broadcast Applications list has the flaw of only listing the "old" community of license for FM minor modification applications filed to effectuate a community of license change authorized by a rulemaking Report & Order While this is not a critical flaw where the community of license change has already been evaluated and authorized, were the Commission to determine to permit AM and/or FM community of license changes via minor modification applications, then this system must be fixed so that the new proposed community of license appears on the Broadcast Applications list. Otherwise, there would effectively be no public notice of the proposed community of license change

Proposal 6
To Streamline the Process for Downgrading a Class C Station to Class C0 Status
We support a limited streamlining of the Class C0 reclassification procedures. Experience with the procedure as it now exists has shown that sub-451-meter Class C stations with no intention

of ever increasing their tower height can nevertheless cause significant delay to proposals to expand the service of adjacent channel stations

After a triggering application is filed, it may be two or three months before an Order to Show Cause is issued to the Class C station, affording them 30 days to respond as to whether they intend to seek a height increase If they respond in the affirmative, they are afforded 180 days to file their application Often the Class C station's application is filed in the waning days of the 180 day period. At this point, at least nine months have passed from the filing of the triggering application The processing of the Class C station's application may in turn take upwards of a year, particularly if there are FAA clearance or international issues to resolve.

Sub-451-meter Class C stations should be afforded their opportunity to increase their antenna height in response to a triggering application We support a reduction to 90 days for the period in which the application must be filed following an affirmative response to the Order to Show Cause. This will trim three months off of the process, while still allowing a full three months for site options to be explored. (In reality, the Class C station should have as much as six or seven months, if they have been properly served with a copy of the triggering application.)

We do not support the proposal to dismiss any modification application submitted by a Class C station to avoid a reclassification if the applicant does not provide the Commission with all the information it needs to process the application with 90 or 120 days of initially filing an incomplete modification application. There are many cases in which FAA coordination, for example, simply takes longer than 120 days, even for a "simple" height increase at the current tower site

We oppose the proposal to bring applications to reclassify a station from Class C to Class C0 to the front of the processing queue to ensure that modification applications are processed expeditiously. There is value in properly evaluating the triggering application to ensure that it meets all other allocation requirements prior to initiating the reclassification procedure There is no compelling reason why the triggering application should be given priority over other applications in the queue There might nevertheless be some value in affording some priority to the Class C station's application, but if there are outstanding FAA issues (for example) then moving the Class C station's application to the head of the line may not bring any benefit.

We do not support the proposal for increased oversight of a Class C station's progress in building out its construction permit, and the proactive revocation of construction permits when the Class C station has failed to achieve certain milestones. (The example of an FAA "no hazard" approval is of course inapplicable, since pursuant to FCC policy FAA approval must be received prior to issuance of the construction permit.) There are numerous factors affecting the construction of tall broadcast towers, and licensees should be afforded their full three years to construct without further Commission oversight [1] To initiate oversight would be akin to returning to a renewal

[1] In our view, a properly prosecuted local land use process should be a qualified tolling event against the three-year construction period In our experience, in the majority of the cases where construction does not occur until near the end of the three-year period, the primary reason for the delay has been an extended local land use process

process for this small subset of construction permits, placing a new burden on the Commission staff

Other Proposals

On the subject of the Class C0 reclassification procedure, we have found that the system as originally designed failed to consider numerous possible scenarios, many of which have actually occurred. For example, what happens when the Class C station files a 451-meter application at a tower site which is fully-spaced to the triggering application? In a case such as this, we believe that the licensed Class C facility should be reclassified so that both the triggering application and the Class C application may be granted

There are numerous other examples involving such issues as what happens when a party tries to trigger a reclassification in the context of a rulemaking counterproposal, relying upon an identical reclassification proposed in an unrelated application or original rulemaking proposal.

We request that the Commission produce a comprehensive list of examples of application of the Class C0 reclassification procedure, much like the August 31, 1993 Public Notice *"Mass Media Bureau Offers Examples of the Treatment of Applications Filed Under the New "One Step" Process Including Treatment of Conflicts Between Petitions for Rule Making to Amend Part 73 202(B) and FM New and Major Change Applications"*. Similar guidelines for application of the Class C0 reclassification procedure would be of great use

I hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

Signed this 21st day of May, 2004

BENJAMIN F. DAWSON III STATE OF WASHINGTON 14027 REGISTERED PROFESSIONAL ENGINEER

EXPIRES 06/14/05

Benjamin F. Dawson III, P E

Erik C. Swanson

Certificate of Service

I, Erik C. Swanson, do hereby certify that I have on ths 21st day of May, 2004, caused to be hand delivered or mailed via First Class Mail, postage prepaid, a copy of the foregoing COMMENTS to the following.

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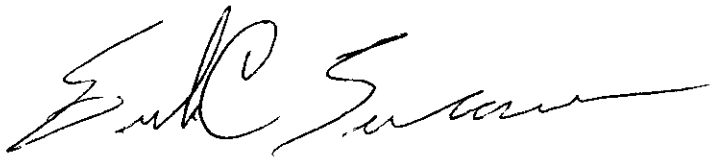

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